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HUMAN RIGHTS COMMITTEE

Forty-sixth session

SUMMARY RECORD OF THE 1202nd MEETING
(FIRST PART*)

Held at the Palais des Nations, Geneva,
on Wednesday, 4 November 1992 at 3 p.m.

Chairman: Mr. POCAR

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* The summary record of the second part of the meeting appears as document CCPR/C/SR.1202/Add.1.

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Report of Croatia (M/CCPR/92/67) (continued)

1. The CHAIRMAN invited the Croatian delegation to reply to the additional questions put by three members of the Committee at the previous meeting.

2. Mr. KRAPAC (Croatia), replying to the question concerning the number of persons brought before the military courts, supplemented the figures he had presented at the morning meeting. A total of 21,951 persons had been charged with criminal offences connected with an armed conflict in the territory of the Republic and a total of 6,829 had been brought before the military courts between August 1990 and July 1992. The number of persons investigated by the ordinary courts was 10,635.

3. With respect to the question concerning the ethnic origin of the persons sentenced, he said that unfortunately court statistics made no distinction between the nationalities of persons tried. Only police statistics made a distinction of that nature at the present time. For example, between 1 January and the end of June 1992 police murder statistics indicated that 50 per cent of the victims were of Croatian origin, 44 per cent of Serbian origin, and that the others were Muslims or members of other nationalities.

4. He also explained that, during the military operations, armed conflicts and the de facto state of emergency which the country had experienced over quite a long period, Croatia had not appointed special public prosecutors other than military prosecutors, nor had it established an ad hoc court.

5. Mr. ŠIMAC (Croatia), replying to the question asked by Mrs. Higgins, said that the International Red Cross had access to prisoner of war camps. She had also asked whether, in the areas controlled by UNPROFOR, violations had been committed by all national parties. In his view that was probably not the case because in those areas ethnic cleansing had been extremely efficient; virtually all non-Serbs, with the exception of a few elderly persons who had been unable to leave, had been expelled.

6. As a matter of interest, the Croatian Parliament had, about a month previously, adopted a Law abolishing criminal prosecution and proceedings for criminal acts perpetrated in armed conflicts and in the war against the Republic of Croatia. Article 2 of that Law specified that it did not apply to perpetrators of criminal acts, whom the Republic of Croatia was required to prosecute pursuant to the obligations assumed under international law. That Law was one of the steps taken by the Croatian Parliament and Government with a view to reconciling peoples of different nationalities who lived in the territory of the Republic. It was a goodwill gesture designed to put an end to hostilities and to find means of coexistence.

7. The CHAIRMAN invited members of the Committee to present their final observations concerning the report of Croatia.

8. Mr. HERNDL noted that Croatia was a party to the Covenant by virtue of its declaration of succession to that effect. He also emphasized that the Constitution adopted in 1991 contained important human rights provisions and that the treatment of minorities was governed by a new Law, namely, the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia. The Committee would be able to examine in detail the constitutional system as well as the Law on Minorities in connection with the initial report to be submitted by Croatia under the Covenant.

9. The Committee was quite aware that Croatia was in a very special situation: it had experienced civil war in its territory, which was now under the protection of UNPROFOR. It was clear from the report and the explanations of the delegation that the Croatian Government was aware of its obligations under the Covenant, and in particular the obligation to prevent any act likely to compromise the application of articles 6, 7, 9, 10 and 12, which protected essential rights in the present context. The Committee had noted with a certain amount of satisfaction the specific measures and procedures adopted to prevent any violation of the fundamental rights of the individual. He hoped that the Government would continue along those lines despite difficulties connected with the present situation which could not, however, justify inaction in the face of violence against persons and practices condemned by the Covenant.

10. The Committee was also concerned by the Government's attitude to Croats living outside the territory of the Republic, and considered that the Croatian authorities should refrain from any action that might be interpreted as outside support for the aspirations of those Croats.

11. In conclusion, he considered that the dialogue with the Croatian delegation had been quite satisfactory. The Committee had been provided with detailed explanations, accompanied by references to the laws of the Republic. It was to be hoped that those laws would be applied in the spirit of the Covenant and the Croatian Constitution, which stated that certain rights inherent in the human person must not be violated in any way by the public authorities, regardless of circumstances. Even if it was difficult to do so, the State party should respect its obligations towards its own citizens, regardless of their ethnic, racial, linguistic or other affiliation.

12. Mr. MÜLLERSON said that the replies to questions and the information supplied by the Croatian delegation revealed that the authorities were taking steps to put an end to the human rights violations that were occurring in the territory under their control and to protect minorities. The Committee understood full well the difficulties that hampered implementation of those measures and realized that there was always a time-lag between the adoption of a law and its application.

13. He had been struck by the reference, in the preamble to the Croatian Constitution, to the right of the Croatian nation to self-determination. But under international law that right was regarded not as a right of nations but as a right of peoples - which was moreover stated in article 1 of the Covenant. That subtle difference was important, for the right of peoples

implied the right of all the citizens of the State to have a say in deciding the future of the country.

14. Furthermore, it was also stated in the preamble to the Constitution that the Republic of Croatia was established as the national State of the Croatian nation comprising members of other nations and minorities who were its citizens - Serbs, Muslims, Slovenes, etc. In his view, that wording attributed special status to an ethnic group, namely, the Croatian nation, and could be a source of discrimination in law and in practice.

15. Lastly, he noted that the head of the Croatian delegation had above all referred to human rights violations committed by the other parties. The Committee knew of the existence of such violations, which were often more serious than those attributable to the Croats, but it would have desired more information in reply to the specific questions put by members of the Committee and to the references made in the report of the Special Rapporteur of the United Nations Commission on Human Rights (E/CN.4/1992/S-1/9 and 10) and that of CSCE. In conclusion, he said he was unable to accept the idea that Serbian aggression was the cause of all violations, which in his opinion, had began in Croatia, in Serbia and elsewhere as a result of routine discrimination and had subsequently spiralled and assumed the proportions of massive violations of human rights.

16. Mrs. HIGGINS noted that accurate and detailed replies had been provided to the questions put by members of the Committee. She associated herself first of all with Mr. Müllerson's observations concerning the Croatian Constitution. As for the question of responsibility, she noted that, according to the head of the Croatian delegation, the Government agreed to be held responsible for any human rights violations committed in the portion of Croatian territory under its control but rejected any other responsibility. However, a State was responsible not only for violations committed in its territory but also for those committed by its army or officials abroad, as well as for any incitement or encouragement to act in a manner likely to violate the obligations it had assumed under international law, even abroad.

17. She noted that the Croatian authorities had taken serious steps, particularly at the legal level, to prevent new human rights violations in their territory. However, those measures were essentially directly against those regarded as the enemies of Croatia, namely, the rebels. Yet what was of interest to the Committee was information about the legal proceedings instituted against public officials who had violated the Covenant. She was unsure whether she had really understood the vigour of the proceedings instituted before the military courts against persons in that category.

18. Although the Croatian delegation had denied the existence of an ethnic cleansing policy in Croatia, she still wondered whether such cleansing had not been achieved by the initial harassment of the Serbs who had been obliged to leave the territory for their own safety. She hoped that the episode was over and that steps would be taken to enable all those who had lived in Croatia before the events to return, regardless of their ethnic origin. As the delegation had said, that required the restoration of confidence, particularly that of the minorities. In that connection she took note of the establishment of the Office for Inter-Ethnic Relations and the Government's undertaking not

to make distinctions on the basis of ethnic origin except in the context of article 27, although she strongly felt that the lists in which the population was classified by ethnic origin should be publicly condemned.

19. Lastly, referring to the events in Bosnia and Herzegovina, she said she was aware that there was a right to collective self-defence which, however, did not enable the State party to evade all responsibility for its own army, even when it was deployed outside the territory under its jurisdiction. There too certain doubts persisted concerning some degree of de facto participation by Croatian troops in ethnic cleansing operations in the territory in question. It was one thing when a State sent its troops at the request of a Government but quite another when the presence of such troops created a situation which was contrary to the wishes of that Government concerning its political future.

20. In conclusion, she noted that, despite the persistence of concern, the Committee had established an extremely promising dialogue with the Croatian delegation, and the fact that Croatia had succeeded to Yugoslavia in respect of the Covenant would make it possible to continue that cooperation.

21. Mr. SERRANO CALDERA said that, in the context of the extraordinary violent events that characterized the situation under consideration, it appeared that the main violations were taking place on the Serbian side, as was indicated in the reports of the Special Rapporteur of the Commission on Human Rights and CSCE. Yet those events constituted global violations of human rights by all parties to the conflict. A series of human rights violations had occurred in Croatia, particularly in respect of persons of Serbian origin in the form of discrimination, harassment, maltreatment and publication of lists - practices that were all a serious source of concern since they reflected an upsurge of racial problems.

22. Like Mrs. Higgins, he considered that the right to legitimate defence did not shield the State from any responsibility for human rights violations.

23. He noted with satisfaction that Croatia had become a party to the Covenant by deciding to succeed to Yugoslavia in respect of its international obligations. He also noted with satisfaction the provisions of the Constitution and the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities, which prohibited any discrimination based on race, colour, sex, language, religion or political opinions and guaranteed minorities equality of treatment before the law. He expressed the hope that application of those provisions would make it possible to ensure respect for human rights in Croatia.

24. Mrs. CHANET said she appreciated the Croatian delegation's desire for cooperation, which was reflected in its submission of the report and its replies to various questions. She had taken note of Croatia's wish to succeed to the former Yugoslavia and to apply the Covenant, but wanted to express a number of concerns. The information submitted did not indicate that the Croatian Government was being particularly energetic in trying to prevent the extension in its territory of the ethnic persecution referred to in the reports of the Special Rapporteur of the Commission on Human Rights and of CSCE. Yet that was one of Croatia's obligations under the Covenant. The

figures presented indicating the nature of the victims clearly revealed that, although they included a few Croats, it was above all the Serbs who were targeted in the destruction of shops and apartments as well as in the cleansing of the administration. The Government stated that it did not condone those responsible for such acts and would not do so even if such acts constituted reprisals. Yet it had not indicated exactly what it intended to do to put an end to those practices, and above all to prevent them. Moreover, the delegation had said that it had no knowledge of the list of citizens classified by ethnic origin, whereas the Commission's Special Rapporteur had it in his possession. The delegation should obtain that list in order to determine who had printed it and how it was disseminated in the territory.

25. With respect to the proceedings instituted against the perpetrators of arbitrary acts, she said she had not understood the nature of the criminal charges being brought, and in any event there were considerable discrepancies between the number of investigations (several thousand), judgements (423) and convictions (91); those differences indicated that prosecution and punishment had not been completely effective. Moreover, the delegation denied that the State was responsible in any way for the camps operated by the Croats in Bosnia and Herzegovina. But a State could not refuse to accept responsibility for acts committed by persons acting under its authority on the pretext that such acts were committed outside its territory. She noted that there were three prisoner of war camps, that no civilians were held in them, that the Geneva Conventions were applied, and that ICRC had access to them. Despite the concern she had expressed, the dialogue had, in her opinion, been fruitful and encouraging.

26. Mr. LALLAH drew attention to three points. First, there could be no doubt that the State was responsible for acts committed by its agents in a third country. The delegation had said that, as a member of the United Nations and State party to the Covenant, Croatia enjoyed the right to legitimate defence as well as the right to assist its neighbours and, consequently, the new State of Bosnia and Herzegovina. Nevertheless, he wondered about the meaning attributed to the word "assist". He also emphasized that, if a State decided to go to the aid of another country, it should assume the consequences of that assistance, even outside its frontiers. According to the Committee's practice, the State was responsible under the Optional Protocol when, for example, it sent its agents abroad to abduct or torture individuals. The Croatian Government should therefore reconsider its position concerning its responsibility for acts committed by agents of the State outside the national territory.

27. Secondly, although the term "ethnic cleansing" was now in general use it was clearly a euphemism used to designate the most flagrant violation of the provisions of article 2, paragraph 1, of the Covenant. In that respect, he wholeheartedly endorsed Mr. Müllerson's comments concerning the preamble to the Croatian Constitution, the wording of which hardly seemed likely to help combat discrimination.

28. Thirdly, it was not clear in what respect the military courts were different from the civil courts. Be that as it may, in view of the type of situation prevailing in Croatia, the authorities should most definitely make an in-depth and very careful study of the question of those distinctions and

ensure that all the guarantees inherent in normal court procedure were ensured in respect of investigations into cases of human rights violations, the defence of the accused and the punishment of the guilty parties.

29. Mr. AGUILAR URBINA said he shared the concern expressed by Mr. Lallah, although he agreed with Mr. Šimac that the Croatian authorities were unable to ensure respect for the Covenant in the part of the territory that was in the hands of the Serbian militia. The situation was completely different in Bosnia and Herzegovina, however: the Croatian armed forces in the territory of that State were answerable to the Croatian Government and were under its jurisdiction. In that sense, the Government was responsible for their acts. By way of example, he recalled the case of My Lai in Viet Nam, when the United States soldiers responsible for massacring the inhabitants of that village had been brought before United States courts to answer for their crime. More generally, he said that several years being associated with the peace process in Central America had convinced him that it was absolutely vital for the authorities to pursue a transparent policy and to hide nothing. The dialogue with the Croatian delegation had certainly been useful, although certain concerns remained. Specifically, the authorities were apparently trying to deny a number of facts which were nevertheless obvious to the international community. For example, it was impossible to say that there were no detention camps for they did exist, just as it was impossible to say that there was no ethnic cleansing, for it was taking place. Nor could it be claimed that there was no list of citizens classified by ethnic origin for it was circulating freely in Croatia where it was sold at newspaper stands and had, moreover, been printed on army presses. The Government's responsibility was therefore quite clear in the matter. He would gladly furnish the Croatian delegation with a copy of that list as soon as he received it from Mr. Mazowiecki, the Special Rapporteur.

30. Notwithstanding those reservations, he felt that Croatia was clearly making progress in a peaceful direction, and concluded on that note of hope.

31. The CHAIRMAN, noting that the list of speakers wishing to present their conclusions concerning the report submitted by the Republic of Croatia was exhausted, thanked the Croatian delegation for its replies and its extremely useful comments, which had demonstrated its desire to cooperate with the Committee.

32. He shared the view expressed by other members of the Committee concerning the extent of the responsibility borne by a State party under the Covenant. Such responsibility covered not only acts committed in the territory of the State as such but also those perpetrated by its agents, whether members of the armed forces or civilians, beyond its national frontiers, as well as incitement to such acts. He simply wished to emphasize once again that all the human rights violations referred to were of the greatest concern to the Committee. It should be clear to the Croatian delegation that the observations and criticism expressed by members of the Committee reflected the hope that the authorities would, in the near future, adopt more specific measures to prevent the repetition of such violations, having regard to all the various international human rights instruments in respect of which the Croatian Government had stated it was prepared to succeed to the former Yugoslavia and which it had undertaken to apply. Moreover, the Republic of

Croatia had made its succession in respect of the Covenant official - which was a source of gratification - and the Committee hoped it would shortly receive its declaration under article 41 of the Covenant. It also hoped that the succession would apply equally to the two Optional Protocols, as announced by the Croatian delegation.

33. Mr. ŠIMAC (Republic of Croatia) thanked members of the Committee for the objections, questions and criticism they had addressed to the delegation of his country. He hoped that the points still requiring some clarification would be elucidated in the reports that the Republic of Croatia, as a party to the Covenant, would submit to the Committee. He was in agreement with Mr. Müllerson's interpretation of international law and apologized for the error that had slipped into the translation of the preamble to the Constitution where the word "nations" should read "peoples". It also seemed that there had been some misunderstanding about the ethnic Croat community in Bosnia and Herzegovina but, in view of the late hour, he would not revert to that matter. He was sure that the discussion that had taken place with the Committee would help to bolster the efforts made by the competent authorities of his country to ensure respect for and enjoyment of the civil and political rights proclaimed by the Covenant in full accordance with Croatian legislation.

34. The CHAIRMAN thanked the Croatian delegation and said that the Committee had thus completed its consideration of the report of the Republic of Croatia.

35. The Croatian delegation withdrew.

The meeting was suspended at 4.15 p.m. and resumed at 4.35 p.m.

Report of the Federal Republic of Yugoslavia (Serbia and Montenegro)

36. The CHAIRMAN invited the Committee to consider the report of the Federal Republic of Yugoslavia (Serbia and Montenegro) (document without symbol) submitted pursuant to a decision taken by the Committee at the beginning of the previous month. He recalled that the Committee had expressed concern about the events which had taken place and were still occurring in the territory of the former Yugoslavia and which affected the human rights guaranteed by the Covenant; its position was based on the principle that all the peoples of the former Yugoslavia were entitled to the guarantees set out in that instrument. It had therefore requested the States which had succeeded to the former Yugoslavia to submit, under article 40, paragraph 1 (b) of the Covenant, a short report on the human rights situation in their territories. The Government of the Federal Republic of Yugoslavia had submitted its report that the Committee would therefore consider.

37. In welcoming the Yugoslav delegation, he said that the report and the presence of the delegation demonstrated the desire of the Yugoslav authorities to cooperate with the Committee. He recalled that the Governments concerned had been requested to submit a report dealing with four matters, namely, the measures taken to: (a) prevent and combat the policy of ethnic cleansing in relation to articles 6 and 12 of the Covenant; (b) prevent arbitrary arrests and killings of persons, as well as disappearances, in relation to articles 6 and 9 of the Covenant; (c) prevent arbitrary executions, torture and other

inhuman treatment in detention camps, in relation to articles 6, 7 and 10 of the Covenant; and (d) combat advocacy of national, racial or religious hatred in relation to article 20 of the Covenant. He gave the floor to the Yugoslav delegation.

38. Mr. OBRADOVIC (Federal Republic of Yugoslavia (Serbia and Montenegro)) said that the Federal Government had intended to send to Geneva, in addition to the members of the delegation present, the Minister of Justice but that, owing to the events of the previous two days and in particular the government crisis, he had decided not to come. The report submitted to the Committee for consideration was of very recent date so that there was little to add; he would therefore confine himself to a few general comments.

39. The Federal Government as well as a large part of public opinion in Yugoslavia were fully aware of the shortcomings with regard to the observance and promotion of human rights. That was because for almost half a century the country had been under an authoritarian regime whose human rights policy did not measure up to internationally recognized standards despite the fact that, under that regime, Yugoslavia had ratified virtually all international human rights instruments. As soon as it had taken office on 15 July 1992, the present Federal Government had set itself the objective to transform a "party-ruled State" into a State subject to the rule of law. The former Government had, in 1990, already introduced certain legislative amendments, deleting in the Penal Code the crime of disseminating "enemy propaganda" as well as other crimes of opinion, and had adopted a Law granting amnesty to persons who had been tried for those crimes. It had also considerably reduced the powers of the police in matters of investigation and at the same time increased those of the judiciary under the Law on Criminal Procedure. Furthermore, a new Law had been adopted on the association of citizens, which had opened the way to a multi-party system, as well as another Law on public information which guaranteed the freedom of the press and the media in general. The Constitution of the Federal Republic of Yugoslavia, promulgated on 27 April 1992, had abolished capital punishment for offences covered by the Federal Penal Code, which represented progress in the sense that it protected one of the fundamental rights of the individual, namely, the right to life.

40. The Government had drafted two major bills, one on a general amnesty for offences committed in connection with armed conflict and the other on the status of minorities. He explained that, up to January 1992, a large number of persons who had been accused had left the country, and that the amnesty bill was intended to put an end to that type of situation. Lastly, an electoral law guaranteeing fair, equitable and democratic elections at the Federal level had recently been promulgated and should enable individuals to exercise their political rights in full.

41. He drew attention to a number of difficulties which explained why human rights were not always fully respected. Those difficulties were due mainly to the cumbersome nature of the State system responsible for law enforcement and to the mentality of officials who sometimes failed to grasp the spirit underlying those laws. There was also the problem of the competence of various bodies: under the Constitution, Federal bodies had only relatively limited room for practical action and the authorities were not always

able to take appropriate action. Indeed, the judiciary and the administration, including the police, were essentially under the jurisdiction of the two Republics comprising the Federation. All those factors explained the difficulties being encountered by the Federal Government in its efforts to ensure effective protection of human rights. However, such problems could obviously never serve to justify human rights violations, and even less to relieve the Federal Republic of Yugoslavia of its international responsibility in the matter. He also emphasized that the supreme organs of the Federation had called for the amendment of the Constitution in such a way that human rights matters became the direct responsibility of the Federal Government.

42. Another obstacle encountered in efforts to ensure respect for human rights was the armed conflict that had devastated the former Yugoslavia. Since all social institutions had been affected, there had been a resurgence of criminality and general insecurity. In the circumstances, therefore, it was extremely difficult to ensure proper respect for human rights. Yet it was relations between various ethnic groups and nationalities that had been affected the most by the conflict. Until quite recently all those communities had coexisted for 30 or 40 years without experiencing any particular problems. Another consequence of the conflict was the influx of Serbian refugees from Croatia and Bosnia and Herzegovina, as well as Muslims. At the present time the Federal Republic of Yugoslavia had over 500,000 refugees in its territory. Some had arrived with their weapons, intent on making a new home in the Republic, even if it meant using force to achieve that objective, at the expense of members of non-Serbian ethnic groups (Croats and others) whom they regarded as their "enemies" simply because they did not belong to their "nation". The media had played a most negative role in that connection by poisoning relations between ethnic groups, stirring up national and racial hatred, etc. That had further aggravated the difficulties being encountered by the Federal authorities responsible for protecting human rights. In addition paramilitary groups had become a terrible scourge. Indeed, at the beginning of the "Croat war" in the summer of 1991 various groups of volunteers had emerged and formed paramilitary units or militias beyond the control of all official military authority. As soon as it had taken office, the Federal Government, in close cooperation with the authorities of the Republics of Serbia and Montenegro, had disbanded those paramilitary groups but unfortunately their members continued to meet and act in secret, thereby further aggravating insecurity in the country. At the present time, they crossed secretly into Bosnia and Herzegovina from Serbia and Montenegro, often committing serious violations of humanitarian law. Several "ethnic cleansing" attempts had been made, even on the territory of the Federal Republic of Yugoslavia, but the authorities had reacted by taking energetic measures.

43. Replying to question (a), he said that the "ethnic cleansing" policy had never been practised in the territory of the Federal Republic of Yugoslavia. Attempts to do so had, however, been made by certain individuals or groups, no doubt in order to induce non-Serbs to leave their homes. The latter, terrified, had not dared to inform the competent authorities immediately. That was the main reason why the authorities had not reacted promptly. In Vojvodina, for example, Serbian refugees from Croatia had tried to intimidate Croats, but the local population to a man had stood up for them. The various steps taken by the authorities to restore order and ensure the security of all citizens included greater police supervision, investigations, the arrest of

persons accused of having violated the liberty and rights of persons of another nationality or having encouraged ethnic cleansing, and institution of proceedings against them, the trial of 145 persons for illegally bearing arms and the seizure of large amounts of weapons and ammunition. Moreover, senior officials of the competent ministries of the Republic of Serbia, namely, of the Ministry of Justice, had visited the areas in question and had made sure that everything would be done to prevent a repetition of those events. He emphasized that the official authorities of the Republic of Serbia had never encouraged such illegal acts and that failure to take action was due to negligence and not to connivance with the criminals.

44. The steps taken by the authorities had borne fruit. The number of cases of violence against Croats in Vojvodina, for example, had declined considerably during the past few months and, since September, no case of forced expatriation had been recorded there. The authorities were encouraging the tens of thousands of Croatian families who had fled to return to their homes and were endeavouring to compensate them.

45. In the Plevlja area (Republic of Montenegro), where aggression and threats had been directed against Muslims, energetic steps had also been taken to remedy the situation and a number of persons, all of Serbian or Montenegran nationality, had been investigated. Steps had also been taken to recover weapons in the illegal possession of the population and 500 weapons, together with munitions and explosives, had been seized. Furthermore, the Ministry of the Interior of Montenegro was conducting an investigation of 11 police officers in order to determine whether they had simply been negligent by failing to take action in the performance of their duties to maintain law and order, or whether they had connived with the perpetrators of hostile acts directed against Muslims. According to information available to the Federal Government, pressure and threats against Muslims in the area had ended. He emphasized that all attempts at ethnic cleansing on the part of individuals or illegal groups had been repudiated by public opinion, and that had helped the authorities of the Federal Republic of Yugoslavia to put an end to them.

46. Replying to question (b), he said that no arbitrary arrests, so-called political killings or disappearances had occurred in the territory of the Federal Republic of Yugoslavia. In asking that question, the members of the Committee might have had in mind situations similar to those that had occurred in the past in certain Latin American countries under dictatorial regimes.

47. Any arbitrary arrests that might have taken place must have been due to abuse of authority by public officials, as happened in any other country. According to the figures of the Ministries of Justice of the Republics of Serbia and Montenegro, 101 complaints had been lodged against the police since the beginning of 1992, 50 per cent of which had been found to be without legal foundation. Criminal proceedings had been brought against 32 persons and 12 sentences had been pronounced.

48. With respect to question (c), he said that there were no detention camps in the territory of the Federal Republic of Yugoslavia. Prisoners of the Croat war had been exchanged through the International Committee of the Red Cross (ICRC) under agreements concluded between the Governments of the Federal Republic of Yugoslavia and the Republic of Croatia, and persons who

had not yet been exchanged were held in ordinary prisons that were regularly visited by ICRC. The Federal Republic was investigating allegations of certain cases of ill-treatment at the time when there had been detention camps for prisoners of war. It was determined to bring to justice all persons (commanders, guards, etc.) alleged to have ordered or committed acts of torture or other serious violations of the Geneva Conventions against protected persons or who had committed any other wrongful acts against detainees.

49. With respect to question (d), he said that the implementation of the measures prescribed by law against persons who advocated national, racial or religious hatred, as well as discrimination, at the national level and acts of violence was a very serious and sensitive issue. A number of newspaper articles and statements made on television should, according to strict criteria, fall under the provisions of article 20 of the Covenant and the country's criminal legislation. In a context where nationalism was very much in evidence, the public prosecutors were not, in the opinion of the Federal Government, sufficiently firm in bringing charges. The Federal authorities and the authorities of the two Republics were jointly exploring the possibility of drafting regulations designed to prevent advocacy of hatred and at the same time to protect freedom of expression.

50. Mr. SADI thanked the Yugoslav delegation for its report which showed that the Government of the Federal Republic of Yugoslavia was taking the Committee's role very seriously. It was difficult not to be carried away by emotion in the face of the terrible events which were taking place in the territories controlled by the Government. Yet those events did not constitute shortcomings or omissions or even isolated cases of human rights violations. What was happening was much more serious. The entire world had witnessed acts of barbarism of a kind never experienced during the past few years except in Cambodia, where the Khmer Rouge had been responsible for even worse things.

51. According to the report submitted by the Yugoslav delegation, most of the serious human rights violations were attributable to paramilitary units and other elements beyond the control of the civil and military authorities. However, the facts indicated something else - that those elements were in point of fact supported by the enormous Yugoslav military machine. How else could the occupation of villages and towns, the deployment of air forces, the use of tanks and large-calibre canons against Sarajevo, for example, be explained? It was difficult to believe that the Yugoslav armed forces had nothing to do with what was happening. For example, according to the documents available to the Committee, the concentration camps were guarded not by paramilitary units but by soldiers.

52. The Yugoslav authorities, according to the report, intended to bring to justice those responsible for crimes against humanity. Had a court been established for that purpose? That could possibly be one way of restoring law and order in the country.

53. The report stated that the Yugoslav authorities opposed ethnic cleansing and that they had taken energetic measures in that connection. What sort of measures? Had an educational and information campaign been launched?

54. Yet the real question was the following: what was at the origin of all those atrocities and what had happened in the minds of the people of a country that had previously been a model from the standpoint of human rights and tolerance, and in the forefront of the non-aligned movement?

55. Mr. HERNDL thanked the delegation for its report and its oral explanations. He had nothing to add to what Mr. Sadi had said concerning the activities of Yugoslav forces outside Yugoslav territory which were not mentioned in the report and for which the Federal Republic of Yugoslavia was responsible from an international point of view. A serious violation of international law had taken place and all human rights violations attributable to Yugoslav elements should be severely punished.

56. The Yugoslav report referred to general amnesty bills concerning offences committed in connection with armed conflict, with the exception of serious violations of humanitarian law, in other words, war crimes and crimes against humanity. How were those crimes defined?

57. It was explained in the report that persons responsible for law enforcement were not always able to understand the spirit of the law because they had been trained under the former regime. That type of problem arose in all countries, and could not be used to excuse acts that were contrary to the law or the State's international obligations.

58. The report mentioned the firm steps said to have been taken by the Government to prevent ethnic cleansing, attempts at ethnic cleansing or attempted aggression against persons not belonging to the ethnic majority. What was the nature of those steps?

59. Referring to question (c), he noted that according to the report there were no detention camps and therefore no problem in that connection. The term "detention camp" used by the Committee was perhaps too restrictive and should have been taken to mean any place of internment, regardless of its nature. Could the Yugoslav delegation indicate whether there were any cases of arbitrary execution, torture or other inhuman treatment in the territory of Yugoslavia?

60. The report discussed the steps taken at Vojvodina and Plevlja, but made no reference to Kosovo where, according to certain reports, persons were maltreated, beaten by the police or ill-treated in prison. What had been done to remedy that situation? How were the inhabitants of Kosovo treated, particularly those who were not of Serbian origin?

61. Lastly, with respect to efforts to curb advocacy of hatred, he said he appreciated the frankness with which the Yugoslav authorities had, in a way, admitted that they had not done everything that they could have to prevent violations of article 20 of the Covenant. In that respect he associated himself with Mr. Sadi's question, and thought that the Yugoslav Government should take firm steps to put an end to advocacy of hatred, which was the root of the evil.

62. Mrs. CHANET noted that, according to the report of the Federal Republic of Yugoslavia, the Government attributed human rights violations committed in

the country to the armed conflict as well as to the presence of paramilitary groups beyond the control of any official authority, both in Croatia as well as in Bosnia and Herzegovina. The Government also stated that no ethnic cleansing policy was pursued in the territory of the Federal Republic of Yugoslavia. Yet those declarations completely contradicted the information which was available to the Committee and the entire world and which had been obtained from reliable sources. In particular she was astonished that isolated paramilitary groups, uncontrolled and very marginal, had really been able to choke the town of Sarajevo and to launch an offensive on such a scale on so many fronts. It was difficult to believe that the Government had played no role in the events that had occurred in the territory and that it was doing its best to prevent excesses. It was similarly difficult to believe that there was no ethnic cleansing policy whereas Mr. Mazowiecki, the Special Rapporteur, had affirmed that that policy was precisely one of the war objectives which had to a large extent already been achieved by various means, such as summary executions and torture. Moreover, the Government stated that a few persons had been prosecuted for participating in ethnic cleansing, but there again it was difficult to believe that a policy on such a vast scale could be pursued in an isolated manner by four or five persons in one area of the country. She would appreciate hearing what the delegation had to say concerning the measures envisaged or taken by the Government to put an end to the long series of human rights violations committed in the Federal Republic of Yugoslavia.

63. Mr. PRADO VALLEJO said it was clear that the Federal Republic of Yugoslavia was violating the most basic right of peoples, namely, the right to self-determination, by refusing to recognize the legitimacy of the new States which formerly comprised Yugoslavia. The report contained no credible information about the measures taken by the Government to guarantee the application of the Covenant and protect human rights in the region. The authorities apparently knew nothing about the events that were taking place in the territory they controlled, and alleged that the armed forces had committed only a few isolated abuses. Yet it was quite clear from the report of Mr. Mazowiecki, the Special Rapporteur, that what was happening was not simply the temporary abuse of authority on the part of the Yugoslav armed forces but rather the conquest of a territory, in violation of norms of international law, accompanied by genocide. The Government had done nothing to investigate the massacres and was continuing to violate all the provisions of the Geneva Conventions.

64. He found unacceptable the reference made in the report to the situation in Latin America, which was incorrectly interpreted and bore no relation to the Yugoslav conflict. In his view, States were responsible for their acts, and in the present case the Yugoslav authorities were responsible for the abuses committed by the military forces which, as was common knowledge, perpetrated acts of torture, conducted arbitrary executions and subjected detainees in military camps to various kinds of ill-treatment with impunity. How could such things be allowed to happen? He was deeply concerned by the situation in that region of the world where genocide was apparently "tolerated" by the authorities, and he hoped that the international community would take action in order to ensure respect for Security Council resolutions and put an end to violations of humanitarian law.

65. Mr. EL SHAFEI noted that the delegation of the Federal Republic of Yugoslavia had not indicated what were the relations between the Federal Republic of Yugoslavia (Serbia and Montenegro) and the newly-created States of Croatia, Slovenia and Bosnia and Herzegovina. In its report, the Federal Government stated that it respected the territorial integrity of the new States and that it was complying scrupulously with its obligations to respect frontiers. Yet the report indicated that 500,000 refugees from Croatia and Bosnia and Herzegovina had crossed into Serbia and Montenegro, and that many of those refugees were again fleeing into Bosnia and Herzegovina. He was most surprised to note, therefore, that the Federal Government was apparently incapable of controlling the peoples under its own jurisdiction and ensuring respect for frontiers. Mr. Mazowiecki, the Special Rapporteur, had stated in his report that the initiative taken by Mr. Milan Panic, the Prime Minister of the Federal Republic of Yugoslavia, with a view to establishing a dialogue and putting an end to human rights violations in the country might produce positive results. Yet the Serbian authorities were energetically rejecting all those proposals, and any hope of a solution was gradually ebbing. The international community was therefore justified in asking how far the situation would continue to deteriorate. The Committee, for its part, was experiencing considerable difficulty in establishing a sincere dialogue with the representatives of the Federal Government, who were systematically rejecting any allegation concerning ethnic cleansing, arbitrary arrests, summary executions and advocacy of national hatred. In the circumstances, he was seriously concerned about the future of the country.

66. Mr. MÜLLERSON said that the facts, as reported by a number of reliable sources, proved beyond any possible doubt that massive human rights violations were being committed in the former Yugoslavia, and that the Serbian authorities were directly implicated in such violations, or at least encouraged them. That necessarily implied the responsibility of the Serbian leaders for the acts committed by armed elements who were ravaging Bosnia and Herzegovina in particular. The Serbian forces were in fact using armed groups which had been part of the former Yugoslav People's Army and which had remained in the territory of Bosnia and Herzegovina to conduct large-scale military operations and massacre civilians. It would therefore be wrong to consider that the present leaders of Serbia and Montenegro were not responsible for the crimes that had been perpetrated. They had not hesitated to launch against Slovenia and then against Croatia - territories which at the time had not been internationally recognized as sovereign States - brutal aggression which had resulted in a large number of victims among innocent civilians and had involved massive violations of international humanitarian law.

67. He would appreciate details about the conflict of competence between the Federal authorities and the Serbian authorities referred to in the report, for it seemed that that conflict was much more serious than the Government admitted. Perhaps the delegation could indicate whether the Federal authorities were capable of controlling the activities of the Serbian authorities as well as the activities of the army, both in the territory of Serbia and Montenegro as well as outside, mainly in Bosnia and Herzegovina. It might also describe any measures taken by the Federal authorities to mitigate the seriousness of the human rights situation in Kosovo.

68. Mrs. HIGGINS said it appeared, from the observations of the delegation and the report submitted, that the Government admitted bearing some responsibility for the acts committed by the new Federal State of Serbia and Montenegro. However, no responsibility had been specifically recognised in respect of ethnic cleansing, the bombardments and genocide - acts which all constituted serious violations of articles 6 and 7 of the Covenant. On the subject of ethnic cleansing, the Government stated that there had never been any question of making it an official policy but that the problem was due, on the one hand, to the division of responsibility within the Federal structure and in particular to tension between the Serbian authorities and the Federal authorities and, on the other hand, to Serbian elements in Croatia and in Bosnia and Herzegovina. She was personally far from satisfied by those explanations, since from the standpoint of international law, the State was responsible both for its own acts and for acts committed on its behalf, which included any omission, negligence or inability to control persons under its authority. It was therefore clear that the Federal Republic of Yugoslavia was directly responsible, in view of the fact that entire towns had been bombarded mercilessly by the Federal army and that elements of that army were still ravaging Croatia and Bosnia and Herzegovina, as indicated by all reports on the subject. The Federal Government was also responsible for the fact that, for example, the bombardment of Sarajevo could not have continued for months without the active support of agents of the Federal Republic of Yugoslavia.

69. As for ethnic cleansing, there was abundant proof of the complicity of the Federal Government, and it appeared Utopian to hope that a constructive dialogue on the subject could be established with its representatives. The delegation had indicated that a number of persons belonging to ethnic minorities had been seriously affected, although it had been proved that in point of fact it was a scourge inspired by ethnic hatred of a kind that Europe had not experienced since the holocaust. Furthermore, Serbia and Montenegro had never been attacked by any army from Croatia or Bosnia and Herzegovina, whereas the Federal Republic had engaged in outright aggression which had inevitably had devastating consequences for the civilian population in violation of the Geneva Conventions, as well as article 6 of the Covenant concerning the right to life and article 7 prohibiting inhuman treatment.

70. Lastly, with respect to the amnesty that might be granted, she would like to know what exceptions could be made for war crimes and whether amnesty would also be granted to persons who, owing to their opposition to ethnic cleansing measures, had refused to serve in the Federal army.

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